COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of NSTAR Electric Company	)	D.T.E. 06-40

INITIAL BRIEF
OF
MASSACHUSETTS INSTITUTE OF TECHNOLOGY
AND
PRESIDENT AND FELLOWS OF HARVARD COLLEGE

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I. HISTORY OF THE PROCEEDINGS

On December 6, 2005, pursuant to G.L. c. 164, § 94 and 220 CMR § 5.00 et seq., Boston Edison Company ("BECo"), Cambridge Electric Light Company ("Cambridge"), Canal Electric Company ("Canal") and Commonwealth Electric Company ("ComElec"), (together "NSTAR Electric" or "the Companies") filed a petition with the Department of Telecommunications and Energy ("Department") seeking approval of a settlement agreement ("Settlement") entered into with the Attorney General of the Commonwealth ("Attorney General"), the Low-Income Energy Affordability Network and the Associated Industries of Massachusetts. The Settlement contemplated the filing of the Petition in this above-captioned proceeding as part of the corporate restructuring of the Companies into a single corporate entity and related rate matters. This Settlement was approved by the Department on December 30, 2005 in D.T.E. 05-85.

In the Petition in the instant proceeding[1], NSTAR Electric has filed several requests related to the proposed merger of the Companies including 1) approval of the proposed merger pursuant to G.L. c. 164, § 96; 2) determination that the terms of the proposed merger are consistent with the public interest; 3) approval of the consolidation of retail rates for Basic

[1] Exh. NSTAR-1.

Service and the Pension Adjustment Factor; 4) approval of the ratemaking proposal relating to the functional reclassification of Cambridge's 13.8 kilovolt ("kV") facilities as distribution rather than transmission facilities[2]; 5) approval of a proposal to implement uniform depreciation rates; and 6) confirmation of the transfer of franchise rights of Cambridge and ComElec to BECo (to be renamed NSTAR Electric Company). NSTAR's Petition requests the immediate consolidation of the particular rates described above prior to the planned 2010 complete consolidation of all of the rates of the merging companies.

II. STANDARD OF REVIEW

In approving proposed consolidation of rates related to a merger transaction, the Department will review the effect of the merger on rates among other factors. In its Petition, the Companies state that the proposal satisfies the statutory public interest standard set for in G.L. c. 164, § 96 as applied by the Department in recent merger proceedings, citing *Eastern-Colonial Acquisition*, D.T.E 98-128 (1999); *Eastern-Essex Acquisition*, D.T.E. 98-27 (1998) and *Boston Edison/Commonwealth Energy System Merger*, D.T.E. 99-19 (1999). The Companies assert and MIT/Harvard agrees, that those cases establish a "no net harm" standard for evaluated proposed mergers. The Petition further defines the no-net harm standard as requiring a demonstration that "the public interest would be at least as well served by approval of a proposal as by its denial." Petition at 2.

MIT/Harvard notes that the Department has been explicit in its application of the no net harm standard in reviewing the proposed consolidation of rates as part of a merger proposal. In reviewing rate impacts related to a merger, the Department has relied on the public interest standard set forth in G.L. c. 164, § 94: "A Section 94 review is necessary for the public interest

[2] The functional reclassification of the 13.8 kV facilities would transfer rate recovery for the revenue requirement associated with those facilities from a transmission rate set by the Federal Energy Regulatory Commission ("FERC") to a distribution rate subject to Department approval.

standard that is statutorily explicit in G.L. c.96, lies also at the heart of G.L. c. 164, § 94 by judicial construction." See *Massachusetts Electric Company et. al*, D.T.E. 99-47, p. 18 (2000). In that case, the Department approved a plan to protect customers of one of the merging electric distribution companies, Eastern Edison, from rate increases otherwise associated with the merger of the rates of Eastern Edison with the rates of Massachusetts Electric. D.T.E. 99-47 at 22. In that instance, the merger of rates protected the customers who would otherwise receive increases from being adversely affected by the merger, thus meeting the no net harm standard for the merger request.

As described more fully below, the proposed merger and the rate changes proposed by the Companies fail to meet the no net harm standard.

III. ARGUMENT

Section 96 of Chapter 164 requires that the Department determine that the proposed merger is in the public interest. In recent merger cases, the Department has established the no net harm standard which requires the "avoidance of public harm" or that the "public interest would be at least as well served by the approval of a proposal as by its denial". *BostonEdison/Commonwealth Energy System Merger* DTE 99-19 at 10. As discussed above, one of the key factors which the Department considers in applying the no net harm test is the impact on rates. In the instant case, the evidence shows that there is a public harm occasioned by the merger in the form of increased transmission and distribution rates, particularly to the customers of Cambridge. As discussed in more detail below, the enormous increase in Standby rates that will result from the merger will discourage the development of on-site generation thereby producing a negative impact on important societal goals and economic development, two other factors considered by the Department in the no net harm standard Thus, in order to meet

the no net harm standard, the Companies must show that the benefits of the proposed merger outweigh, or at least balance the harm that results. In other words, at the heart of the no net harm standard is a balancing test.[3] If the benefits of the merger outweigh any harm, then it is appropriate for the Department to approve the proposed merger. If the scales are absolutely even, that is the benefits and harm are in equipoise, the no net harm test has also been met and the merger is also properly approved. However, if the harm associated with the merger outweighs the benefits, then the statute and the Department's own precedent compel the conclusion that the merger is not in the public interest and should not be allowed to go forward. That this is the case with the proposed merger is the only reasonable conclusion which the record evidence permits.

Although the Companies clearly have the burden of proof, they have not presented a persuasive case in support of the merger. As discussed in more detail below, the Companies were unable to quantify any meaningful financial savings or operational efficiencies from the proposed merger. Nor do they suggest that the merger will have any impact on the financial viability of the Companies. In contrast, the record shows that the merger will bring significant and demonstrable harm to customers, particularly those of Cambridge. Existing[4] and future Cambridge customers with on-site generation will experience an enormous rate increase by virtue of the Companies' proposal to move Cambridge's 13.8 kV facilities from transmission to distribution. Due to congestion charges, all customers of Cambridge, and likely those of Commonwealth, will pay more for transmission rates than they would without the merger. The Company's plan to move Cambridge's 13.8 kV facilities to distribution will also amount to a rate

[3] If the Companies could show that there was no public harm whatsoever, then the no net harm standard would be met and there would be no need to balance harm against benefits. However, that is clearly not the case here.
[4] We acknowledge that the Cambridge has very recently filed a proposed contract amendment with the Department which, if approved, would mitigate the rate increase for the existing standby customer.

increase for all Cambridge customers over what Department precedent and the existing Settlement Agreement would otherwise allow.[5]

In sum, a consistent application of the Department's precedent demands that the merger not be approved.

A. The Companies Have Failed To Document Any Significant Savings Associated With The Proposed Merger.

The Companies' initial filing describes the benefits associated with the merger as "minor" (in terms of efficiency gains) and "small" (in terms of savings). Exh. NSTAR-CLV-1 at p. 10. If anything, this characterization is an overstatement of the merger benefits. Company witness Vaughn conceded on cross-examination that the Companies could quantify only $400,000 in annual savings associated with the proposed merger. TR at 248; Exh. D.T.E. 3-4. Contrast this to the projected savings of more than $630 million associated with the merger of the Holding Companies, a number which the Companies purport to be exceeding. Exh. NSTAR-CLV-1. In the context of Companies with hundreds of millions of dollars in annual revenues, $400,000 is truly the proverbial drop in a very large bucket. Certainly, that level of savings, if it is achieved, will have no discernible impact on customer rates.

The unquantified or as Ms. Vaughn characterized them "amorphous" (TR at 248) efficiency benefits associated with the merger add little to the Companies' case. The Companies do argue that the merger will reduce the number of regulatory filings from three to one. The Companies place particular emphasis on the reduction in the number of rate cases. Exh. D.T.E. 3-4. However, under the current Settlement Agreement, the Companies cannot, absent unusual circumstances, file a rate case until 2012. Even then, its seems more likely that the Companies will simply choose to extend the current PBR. The fact that the Companies would be making

[5] According to the suppliers participating in the docket, the proposed merger would have a deleterious effect on retail competition.

fewer routine filings such as transition cost reconciliations hardly qualifies as a material benefit. Given the huge volume of cases always before the Department, there is simply no evidence that reducing the Department's caseload by several filings a year will produce any significant benefits for customers.

The Companies' argument that the merger will somehow reduce customer confusion is similarly unconvincing. According to Company witness Vaughn, customers see trucks with the logo "NSTAR Electric." The same Company name appears on the customer bills. TR at 346. According to Vaughn, "if they (customers) were to actually look at any of the filings, they wouldn't necessarily know it's a Commonwealth or Boston Edison. They would see NSTAR Electric. So from a layman's point of view , it is NSTAR Electric. That would eliminate a lot of the customer confusion." TR at 346.

This argument addresses a very remote concern. There is no evidence that customers ever knew about this distinction much less than it is a source of concern to them. As a practical matter, we question whether many customers other than very large, sophisticated users, ever even see the filings. It may well be that most customers believe that they are being served by NSTAR Electric. The fact that the corporate entity that is actually providing service to them is a different distribution company is simply not a matter of concern. It is not apparent on the face of the bill and a customer would have to make a substantial effort to determine the details of the status quo. In summary, the purported benefits of the proposed merger are, even by their own characterization, unsubstantial. Indeed, the Companies' own primary witness Ms. Vaughn gave it a very lukewarm endorsement:

> "Stockholders will obtain very little. This merger--to the extent the --we saw the benefits in D.T.E. 1-24, I believe it is --3-4, and there's particular costs that stockholders would bear. They're both very modest. There are benefits that stockholders would have. There's no big, large savings that is out there. There's

actually nothing in this merger other than we are required to do this merger for the settlement and it makes sense. This is why the companies are going forward. There's no special, big pot of gold at the end of it that the merger is enabling."

TR at 344-345.

Even though the benefits of the merger are insubstantial, the Companies might still meet the no net harm standard if it could show that the harm from the merger was equally small. The record evidence does not permit such a conclusion as we demonstrate below.

B. The Merger Will Create Substantial Harm , Especially To Cambridge Customers That Far Outweighs The Benefits.

1. The Merger Will Substantially Increase The Standby Rates For Cambridge.

According to Company witness Vaughn, the proposed merger necessitates the transfer of the Cambridge 13.8 kV facilities from transmission to distribution because the current Boston Edison FERC transmission tariff -- which will survive the merger -- does not include recovery for those 13.8 kV facilities. TR at 415,[6] Exh. NSTAR-CLV-1 at 16. Indeed, Vaughn testified that without the transfer of the 13.8 kV facilities, the Companies would choose not to go forward with the proposed merger. TR at 55.

The record evidence is clear that the transfer of the 13.8 kV facilities to distribution will produce a huge increase in the Standby rates for Cambridge customers. Indeed, the increase to the SB-G2 standby rate (for customers over 100 kVa) is an enormous 115.8% and to the SB- G3 rate, a staggering 238.7%. Exh. RR-TEC-2.

An increase of triple digits in any existing rate is a serious public harm, one that, by itself, all but invalidates the Companies' claim that the merger meets the no net harm standard. Yet,

[6] Companies' Counsel "testified" to this point as well. See TR at 415.

this issue is nowhere addressed in the thirty -six (36) pages of the prefiled direct testimony of Company witness Vaughn.[7]

To the contrary, in her discussion of the rate impacts of the 13.8 transfer, Vaughn states that "Overall, there would be no difference to rates for Cambridge customers when transmission and distribution are added together." Exh. NSTAR-CLV-1 at 28. This assertion is simply not true for the Standby rates. As Company witness Henry LaMontagne later testified, "With regard to the contract demand price, a customer who has internal generation does not incur any transmission charges, so there's no transmission offset for the transmission charges relative to the contract demand." TR at 169. In other words, there is a huge difference in rates for Cambridge Standby customers because there is no transmission offset to the increase in the distribution Standby charges.[8]

The Companies' next argued that the increase in Standby rates was revenue neutral, and produced no harm because no customers were taking the rate. Leaving aside for a moment the validity of that very premise -- which we vigorously contest -- this assertion was inaccurate as well. When asked on discovery how the changes in the Standby rate could be considered revenue neutral, Company witness LaMontagne responded, in part, on July 14, 2006 by saying that "There is no present revenue change associated with this because no customers are being charged under this rate at this time." Exh. MIT-1-19. Two weeks later, Mr. LaMontagne answered another information request, saying, in part, that "the second customer is expected to

[7] One needs to look at the eighth page of the eighth exhibit to the testimony to discover the increase in Standby rates.
[8] The Company also substantially understated the increase in the Standby rate in the original filed version of Exhibit NSTAR-CLV-8. However, in fairness, that appears to be due to a calculation error throughout the entire exhibit. Exh. AG-RR-9.

begin receiving service on August 1, 2006 under a special contract with pricing tied directly to Rate SB-G3."[9]

On cross-examination, Company witness LaMontagne first agreed that it was the Companies' position that "notwithstanding the fact that the rate is going up by 50 percent (actually 238%), its quote, "revenue-neutral" because there's no customer that is currently being served by the rate." Then, Mr. LaMontagne had to admit that in fact, there was an existing customer who would be subject to the 238% increase in Standby rates. TR at 177-178. Ultimately, he even conceded that the proposed increase in Standby rates was "not revenue neutral for that customer." TR at 179.

The fact that the Cambridge just recently filed with the Department a proposed contract amendment which will apparently relieve the current customer of the burden of this rate case is a positive development but does not mean that the Companies have mitigated the harmful effects of the proposed increase in Standby rates.

First, there is record evidence that at least two Cambridge customers are planning to install on-site generation during the period 2007-2010. Exh. MIT-2-1. Although the record is silent on the identity of these customers or the status of their plans, it does seem logical that these customers would have expended some funds in pursuing its on-site generation plans. For these customers, one of two things will occur. Either the customer will have already invested so much in the project that it will go forward, notwithstanding the Standby rate increase, or it will abandon its plans due to the increase. In the first instance, the customer will complete its project and be subject to a rate increase of as much as 238%. In the second instance, the customer will lose the funds it had already invested in the project. In either case, there is a harm.

[9] Any argument that this Customer is not on the SB-G3 rate borders on the disingenuous. The evidence shows that the standby distribution rate paid by the customer is based directly on the SB-G3 rate. Exh. MIT-2-1, TR at 177-179.

Second, and perhaps most important from a policy perspective, any increase in Standby rates, to say nothing of a triple digit one, will discourage new on-site generation. The Companies' argument that this proposed increase will not discourage on-site generation is simply contrary to common sense. Company witness Lafontaine, who earlier testified on cross-examination that this increase in rates would impact the economics of onsite generation (TR at 184.) later claimed during re-direct examination that the impact of the increase in Standby rates was "very small." (TR at 233). TR at 168-169, Ex. MIT 2-1.

Although the Standby rates may affect a relatively low percentage of a customer's overall energy costs, a significant increase will adversely affect the economics of on-site generation. A customer who is considering on-site generation must make a calculation of the savings, if any, that will result from the investment. That is, a customer must compare the cost of its on-site generation against the cost if it remains a customer of the utility. In making this analysis, the customer must take into consideration the many additional risks associated with on-site generation such as potential permitting delays, cost overruns or mechanical problems with the unit. Given these many significant risks associated with on-site generation, a customer must be reasonably assured of significant savings over time in order to go forward. While we acknowledge that the largest component of energy costs for any customer is generation-related (energy/capacity), such costs are nearly impossible to predict with any accuracy. The Department has seen the extraordinary volatility of default service prices over the past few years and few would argue that this will not continue. Thus, any calculation of future generation-related savings would necessarily be highly speculative and not necessarily provide the most reliable basis for a huge capital investment.

If the Companies' proposal to increase Standby rates is accepted, any customer considering on-site generation could well see the delivery portion of its bill increase. This is because if the customer remains on utility service, the increase in distribution rates caused by the transfer of the 13.8 kV facilities will be offset by equal increases in transmission rates. On the other hand; if the customer pursues on-site generation, it will absorb the 13.8 distribution increase with no transmission offset. TR at 178-179.[10] Thus, any analysis of on-site generation will show uncertain energy savings and an all but certain increase in delivery charges. Accordingly, it is unlikely that a customer would move forward with on-site generation and incur all the additional risks under those circumstances.

The fact that this proposed increase in Standby rates will discourage new on-site generation constitutes a serious harm to the Commonwealth that should be given great weight by the Department in its application of the no net harm standard. Indeed, this is a classic example of the kind of societal harm which the Department considers as a factor in the no net harm standard. Moreover, the discouragement of on-site generation will have an adverse impact on economic development, another key factor in the no net harm test. That this is the case is apparent in the newly released Energy Plan of Governor Romney (*Massachusetts Energy Future: A Balanced Approach*) which includes a specific recommendation to encourage on-site generation and to "Reduce standby rates to drive private investment." Exh. MIT-1. Company witness LaMontagne agreed that the Companies' proposal to increase Standby rates was inconsistent with this policy. TR at 188. Indeed , the Governor's policy calls for a decrease in Standby rates,

[10] The Company's Reply Brief may contain various operating scenarios which seek to demonstrate that under some conditions, the on-site customers will pay just as much as they would on the existing NSTAR rates. The undisputed fact is that Standby customers pay the cost of the 13.8 kV facilities and regular customers do not. In most reasonably foreseeable circumstances, that will have to mean that delivery service will be higher for Standby customers.

an issue not before the Department in this docket, but, nonetheless inconsistent with a triple digit increase in Standby rates.

Second, the Department currently has a docket open (D.T.E. 02-38) to investigate the broad policy issues surrounding distributed generation and standby rates. During the course of this proceeding, the Department issued a call for comments on a comprehensive report prepared by the Massachusetts Distributed Generation Collaborative ("Collaborative Report"). Exh. TEC-1. This study includes, inter alia, a comprehensive analysis of the many potential societal and economic benefits that can be produced by on-site distributed generation. See Attachment F. We acknowledge that the analysis in the Collaborative Report has not yet been subject to examination by either the Department or interested parties. However, we submit that until such an analysis is done and until the Department is satisfied that the contributions of distributed generation have been properly quantified, it is simply premature to change the status quo in a way that would demonstrably establish a serious obstacle to future on-site distributed generation projects.

For the reasons discussed above, we respectfully submit that, pending a determination in D.T.E. 02-38 to the contrary, the Department should refrain from approving any increase in Standby rates.

2. The Companies' Proposal To Transfer The Cambridge 13.8 KV Facilities From Transmission To Distribution Rates Constitutes A Rate Increase For All Cambridge Customers, Not Just Standby Customers.

The Companies' proposal to transfer the 13.8 kV facilities to distribution rates will increase those rates by at least $13.4 million. The Companies assert that there is no rate impact because it is simply transferring the wholesale revenue requirement to the distribution revenue requirement. Exh. CLV-1 at 25. Unfortunately, it is not that simple. In the first place, the

Companies are not merely taking the FERC approved wholesale rates and transferring them to distribution rates. Rather, the Companies intend to forecast 2006 data and include that in the rates. Exh. D.T.E. 1-19. Presumably, that represents an increase over the current level of FERC approved rates that would be going into effect without prior Department review. If so, that would also suggest that Cambridge distribution rates would increase by more than $13.4 million.

Moreover, even if the Companies were doing no more than transferring the current FERC revenue requirement into distribution rates, that would not be revenue neutral for two reasons: first, FERC ratemaking treatment is different from that of the Department and second, the Companies' proposed treatment of the 13.8 kV facilities is inconsistent with the Settlement Agreement.

The record is clear that the rate-making approach of the FERC and that of the Department differ in certain respects. Those differences that were identified in the proceeding, such as the return on equity and the capital structure, all tended to result in higher rates under the FERC approach. TR at 396-400. Although requested to do so, the Companies did not calculate the 13.8 kV revenue requirement consistent with Department precedent. TR at 279-280. The closest approximation, based on a Department record request, resulted in a 13.8 KV revenue requirement of $12,029,520, some $1.5 million less than what the Companies are requesting in this docket. Exh. D.T.E.-6-1.

Even were the Department to permit Cambridge to transfer $12,029,520 into distribution rates, that would still be more that what is sanctioned under the Settlement Agreement. Current distribution costs as included in Cambridge's current rates, are based roughly on a test year ending June 2005.[11] TR at 400. According to the Companies' own analysis, inclusion of the

[11] We take the Companies' point that a settlement does not legally establish a rate base and test year. However, the analyses supporting the settlement are consistent with a test year ending June 2005.

13.8 kV facilities in the distribution rate base at the time the Settlement Agreement was filed and approved by the Department would have increased Cambridge's distribution rates by approximately $8.3 million. Exh. D.T.E.3-6, TR at 268. Thus any transfer of 13.8 kV costs above $8.3 million would not be allowed pursuant to the Settlement Agreement except by means of an adjustment for exogenous factors. (Para 2.6.5) Indeed, the Settlement Agreement makes a special provision for the Company to recover investments in new distribution facilities by means of an adjustment for exogenous factors. (Para 2.2.5)

Thus, the Companies' current proposal to transfer 13.8 kV facilities in the amount of $13.4 million or more will amount to a rate increase of at least $5.1 million annually for all Cambridge customers based on the provisions of the Settlement Agreement. That amount could be greater depending upon the difference between the Companies' forecast of the 2006 revenue requirement and the current FERC wholesale rates. Again, this is a harm to all Cambridge customers that must be measured against the very small benefits of the proposed merger.

3. The Consolidation of Transmission Rates Resulting From the Merger Will Increase the Rates of All Cambridge Customers.

The Companies acknowledge that their assertion that the consolidation of transmission rates will be revenue neutral does not include any consideration of congestion costs.[12] Exh. NSTAR-CLV-1 at 19. However, according to the Companies' own estimate, Congestion costs of about $140 million will constitute approximately 56% of total estimated 2006 Regional Transmission costs of about $251 million[13]. Exh. CLC-1-9. We submit that any analysis that ignores more than 50% of the costs is seriously flawed . The Companies argue that congestion costs are simply too speculative to be included in the analysis. Exh. CLV-1 at 18. We disagree.

[12] Congestion costs have been defined as costs associated with Reliability Must Run ("RMR") contracts and Special Constraint Resources (" SCR") costs.

[13] The Company did not provide an estimate of 2006 Local Transmission Costs. In 2005, those costs were $27 million.

While there is uncertainty about which particular units may qualify for RMR or SCR payments in any particular year, the record evidence discloses several facts which all but insure that all Cambridge customers will pay higher transmission rates after the proposed merger and consolidation of transmission rates, regardless of the level of future congestion costs filings approved by FERC.

First, the evidence shows that the only congestion costs paid solely by Cambridge customers are RMR and SCR costs associated with Mirant Kendall. Exh. AG-RR-5. Company witness Vaughn testified that these Cambridge Congestion costs would disappear once the 115 kV transmission connection to the new East Cambridge sub-station was complete and the appropriate notices were given. TR at 255-256. Ms. Vaughn testified that it was the Companies' view that these charges would disappear by May 1, 2007 or sooner. TR at 121. Ms. Vaughn was not aware of any future congestion costs that would be allocated solely to Cambridge. TR at 266. Thus, the only reasonable conclusion which can be drawn from the evidence is that shortly after the planned consolidation of the transmission rates on January 1, 2007, Cambridge will no longer be incurring any congestion costs that are allocated solely to Cambridge.

Second, the evidence shows that absent the consolidation of transmission rates, Cambridge customers would pay approximately seven (7) percent of congestion costs in NEMA. Exh. CLC-1-9, TR at 260. After the consolidation, Cambridge will pay eight (8) percent of any NEMA Congestion costs. TR at 263-264. Thus, whatever the level of congestion costs in NEMA, all Cambridge customers will pay more of them after the consolidation than before.

Third, absent the consolidation of transmission rates, Cambridge customers would pay zero (0) percent of congestion costs in SEMA. After the consolidation, Cambridge customers will pay 8% of these costs. TR at 265. Again, there can be no dispute that whatever the actual

level of future SEMA costs, all Cambridge customers will pay more of them after consolidation than before.

These facts, demonstrate that Cambridge customers will be harmed by consideration regardless of how future congestion costs plot out. The only question is the degree of harm that Cambridge customers will suffer from the merger and consolidation of transmission rates. Any uncertainly about which units in NEMA or SEMA will receive RMR or SCR payments in future years goes only to the issue of how much harm will accrue to Cambridge customers. The harm will be greater the more congestion costs increase in SEMA and somewhat less for increases in NEMA---but there will be a harm. Given this context, the Companies' protestations about the uncertainty surrounding future Congestion costs are simply irrelevant to the issue of whether Cambridge customers are harmed. The consolidation of transmission rates will produce harm to all Cambridge customers and that harm must be balanced against the very small benefits of the merger.

4. The Competitive Suppliers In This Case Have Argued That The Merger Will Cause Harm To Competition.

Although we are not in a position to make an assessment of the merits of their argument, we do note that the competitive suppliers in this docket appear to be arguing that the proposed merger will adversely affect competition. The Department has noted that this is an important factor for consideration in the no net harm test. Moreover, to the extent that the proposed merger increases the costs of competitive suppliers, those increased costs will ultimately be passed on to end use customers.

C. The Balancing Of The Benefits And Harm Of The Merger Dictate That It Not Be Approved.

Based on this record, the proposed merger clearly fails to meet the no net harm standard. As a threshold matter, the merger does produce public harm in the form of higher Standby rates for Cambridge customers and the discouragement of future on-site generation, higher transmission rates for all Cambridge customers, higher distribution rates for all Cambridge customers and potential adverse impacts on competition. The existence of this public harm requires that the Companies demonstrate sufficient benefits from the merger that, at a minimum, balance these harms. The Companies have failed to do so. Attempting to justify the merger on the basis of no more than $400,000 in annual savings and certain "amorphous" benefits like alleviating customer confusion that likely does not exist, falls far short of the standards which the Department should demand of the Companies it regulates. As the Department has noted: "Future filings, based on generalities, will not suffice to justify Section 96 approval…" D.T.E. 98-31 at 30.

If the merger did not harm any customers, the Companies' failure to make a persuasive case would be far less of a concern. As the record, shows, just the opposite is true. There is considerable harm to the customers of Cambridge. Perhaps the most significant harm to not only Cambridge customers, but also to all citizens of the Commonwealth is the imposition of an enormous increase in Standby charges that will almost certainly discourage any new on-site generation projects in the Cambridge service territory. This will have adverse societal impacts and discourage economic development, factors which are important parts of the Department's no net analysis.

The Companies' proposal to transfer the 13.8 kV facilities into distribution rates ignores both the Department's long-standing precedents on rate-making and the specific terms of the Settlement Agreement. The Companies' disregard of these standards produces harm to all Cambridge customers in the form of paying higher distribution rates than should be permitted under current Department standards. Finally, all Cambridge customers will almost certainly be losers in the consolidation of transmission rates.

The result of the balancing of benefits and harm is clear; we respectfully submit that the Department should reject the proposed merger .

There is one further matter to address, namely whether there is any mitigation that the Department could impose on the merger to correct the imbalance between benefits and harm. As a threshold matter, there does not appear to be any way for the Department to mitigate the likely increases in transmission rates which all Cambridge customers will experience. Company witness Vaughn testified that consolidation of the transmission rates was a necessary component of the merger. TR at 249. It is not clear on the record of this case how the Department could mitigate the future impacts on Cambridge customers although we do note that FERC has recently issued the Company a deficiency letter for failing to submit a plan to protect ratepayers from increases in transmission rates.

The only way for the Department to mitigate the effects of the Standby rate increase is not to allow it pending the resolution of Docket 02-38. The Companies recent proposal to mitigate the impact of the Standby rate increase on its existing customer. (See Exh. DTE-RR-3 (Supp)) does nothing to prevent the very worst harm, the discouragement of any future onsite generation projects. None of the mitigation measures discussed in the proceeding will have any measurable effect. A 15% discount off the 238% increase does not accomplish very much. It

still leaves potential on-site generators facing the same situation: installing on-site generation will increase its delivery charges. Similarly, phasing in the increase does not appreciably change the economics of on-site generation. The economic analysis of on-site generation necessarily involves looking at the economic savings over the life of the unit, a period of twenty-five years or more. In that context, phasing in the Standby rate increase over a few years or a few months as proposed by the Company, will not mitigate its impact and thus will not change the result of an economic analysis of the on-site generation option.[14]

In contrast to the adverse effect of the Standby increase on the growth of on-site generation, the disallowance of the increase pending the resolution of Docket 02-38 will not unduly prejudice the Company. In the first place, the Companies have made no projection of the revenue impact of potential new on-site generation in the Cambridge service territory. Exh. MIT 2-1. Second, as discussed previously, the Settlement Agreement gives the Companies the opportunity to file with the Department for an exogenous variable adjustment if it can document revenue losses for the temporary disallowance of the Standby rate increase.

Finally, the only way for the Department to mitigate the impact of the 13.8 kV transfer on distribution rates is to limit the transfer to $8.3 million and require the Companies to seek any additional recovery as an exogenous variable adjustment. This approach is particularly appropriate given that the primary reason for the increase over the June 2005 value is the new East Cambridge sub-station. Exh. DTE 5-4, TR at 269-270.[15] A fair assessment of the record evidence is that the primary purpose of the East Cambridge sub-station is to reduce dependence on Mirant generation and avoid future RMR and SCR costs. See Exh. AG-RR-3. The record

[14] Exh. RR-DTE-3.
[15] The original estimate of $13.3 million was increased to $24.3 million in 2005. Exh. RR-MIT-3 and RR-MIT-4. Approximately 33% of the total 13.8 kV revenue requirement is related to the East Cambridge substation. Ex. RR-MIT-4.

also shows that the East Cambridge sub-station will not achieve that objective until the two 115 kV connections are complete. TR at 121, 256-257. These connections are already one year overdue. Exh. AG-1, TR at 120.[16] Although the Companies are predicting that they will be in place by the end of the year, that is clearly no guarantee. Until that connection is completed, the East Cambridge sub-station is not "used and useful"[17] and any filing for an exogenous variable adjustment should be put on hold until the 115 kV connections are complete - See Exh. RR-TEC-1 and in operation.

III. CONCLUSION

WHEREFORE, Massachusetts Institute of Technology and the President and Fellows of Harvard College respectfully request that the Department deny the Companies' Proposed merger or in the alternative order the mitigation as described above.

Respectfully submitted,
MASSACHUSETTS INSTITUTE OF TECHNOLOGY
and
THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE
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[16] The updated cost estimates for the 115 kV connections cannot be finalized until the engineering design has been finalized. Until the design is finalized, no updated estimate would be provided. Exh. RR-TEC-1.

[17] For costs that a company seeks to recover in rates, the expenditures must be prudently incurred, and the resulting plant must be used and useful in providing service to ratepayers. *Bay State Gas Company*, DTE 05-27, p.102 (2005); *Fitchburg Gas and Electric Light Company*, DTE 98-54 t 12 (1998); *Boston Gas Company*, DPU 43-60, at 24 (1993); *Oxford Water Company*, DPU 1219 at 4 (1983).